IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CRIMINAL APPLICATION No 859 of 1998

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

IDRISH YAKUB MAMJI
VERSUS
STATE OF GUJARAT

Appearance:
MR MA KHARADI for Petitioner
MR SAMIR J DAVE, APP, for Respondents

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 13/03/2001

C.A.V. JUDGMENT

#. This petition can only be under Article 227 of the Constitution of India. Mentioning of Article 226 of the Constitution of India in the title of the petition is

wholly misplaced. This petition is against the order of learned Sessions Judge, Vadodara and here this can only be under Article 227 of the Constitution of India.

#. The facts of the case are that the petitioner is the owner of the truck bearing No.GTF 277. It was seized as therein teak wood was loaded. It was kept at Nasvadi Depot of the Forest Department. Confiscation proceedings of the truck were started and the Deputy Conservator of Forests, Chhota Udepur under its order dated 19-5-1997 ordered for confiscation of the truck. That order has been challenged by the petitioner before the learned Sessions Judge by filing an appeal and the appeal was partly allowed and the order of confiscation of the truck passed by the Deputy Conservator of Forests, Chhota Udepur was substituted by penalty of Rs.70,000/-. the petitioner was not satisfied with this order and he filed this petition.

#. It is contended that the authorities below have gravely erred in assessing the value of teak wood at Rs.42,750/-. This value of teak wood was only of Rs.22000/-. It has next been contended that the truck is of the year 1978 model and its value was not more than Rs.40,000/- and penalty of Rs.70,000/- as imposed by the learned Sessions Judge is towards the higher side. It is urged that the penalty could not have been exceeding the value of teak wood, the forest produce for the commission of the offence the truck in question was used.

#. Learned APP, on the other hand, supported the order passed by the learned Sessions Judge.

#. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

#. It is a case where the State of Gujarat has not filed the petition challenging the order of the learned Sessions Judge, Vadodara, otherwise there would have been all possibility that that order would have been set aside by this Court. It is not disputed that this truck was used by the petitioner for commission of the forest offence. In fact, in such matters everyday I am seeing the Sessions Court are taking liberal view. They are not aware of the fact that liberal approach in the matter would perpetuate the commissioning of more offence with respect to the forest and its produces which, if not protected, will affect the mother land and the atmosphere surrounding it. Provisions of the Forest Act are required to be strictly complied with and

followed for the purpose of achieving the job for which the Act was enacted.

#. Their Lordships of the Hon'ble Supreme Court in the case of State of Karnataka vs. K. Krishnan reported in AIR 2000 SC 2729 observed that liberal approach in the matter with respect to the property seized which is liable to confiscation, is uncalled for as the same is likely to frustrate the provisions of the Forest Act. The Court stated that before passing an order for releasing the forest produce or the property used in the commission of the forest offence, the appellate authority has to specify the reasons which justify such release, apparently, prima facie excluding the possibility of such forest produce or the property being confiscated ultimtely. The Court observed that generally, therefore, any forest produce and the tools boats, vehicles, cattles etc. used in the commission of the forest offence, which are liable to confiscation should not be released. The Court made it clear that this does not debar the officers and the authorities under the ACt including the circumstances of each case but only after assigning valid reasons. Their Lordships of the Hon'ble Supreme Court further stated that the Courts cannot shut their eyes and ignore their obligations indicated in the Act enacted for the purposes of protecting and safeguarding both the forests and their produce. The Forests are not only the natural wealth of the country but also protector of human life by providing clean and unpolluted atmosphere. When any vehicle is seized on the allegation that it was used for committing a forest offence, the same shall not normally be returned to a party till the culmination of all the proceedings in respect of such offence including confiscatory proceedings, if any. Nonetheless, if for any exceptional reasons a Court is inclined to release the vehicle during such pendency, furnishing a bank guarantee should be the minimum condition. No party shall be under the impression that release of vehicle would be possible on easier terms, when such vehicle is alleged to have been involved in commission of a forest offence. Any such release would tempt the forest offenders to repeat commission of such offences. Its casualty will be the forests as the same cannot be replenished for years to come.

#. In this case, the Deputy Conservator of Forests, Chhota Udepur, after considering all the aspects of the matter passed the order for confiscation of the truck and the learned Sessions Judge, though has not reversed that order of the Deputy Conservator of Forests, Chhota

Udepur on merits and found it to be a case where the truck is used for commission of forest offence, still it has taken the liberal view and order of confiscation thereof made by the authority has bee substituted by the penalty of Rs.70,000/-. How far the Sessions Judge, Vadodara was justified to pass this order in view of the latest pronouncement of their Lordships of the Hon'ble Supreme Court in the case of State of Karnataka vs. K. Krishnan (supra). In the matter of forest offence, the consideration of forest produce which was carried in the truck etc. are not relevant and decisive. It is an offence which relates to the forests and in fact it has to be seriously viewed as what their Lordships of the Hon'ble Supreme Court stated. It is not a simple offence but it may ultimately affect the ecology as well as the atmosphere. In case where the ecology is disturbed and it is bound to be disturbed where indiscriminately the forests are cut off, it is danger to human existence and i.e. an offence against the public at large. Similar is the case for want of forest, the citizen will not have clean and unpolluted atmosphere and consequent thereof will be difficult for the human beings to survive. One of the important things for the health of the citizen is to have clean and unpolluted atmosphere and that is put in danger by these forest offenders. The Courts if act in the matter as what it is done by the learned Sessions Judge in this case then it will come as a helping hand to these persons in commission of further forest offences. To curb these activities which are in larger public interest also, the courts have to proceed strictly and rule should have been confiscation of the vehicle and release may be only an exception but in such matters, I am constrained to observe rule seems to be the release of the vehicles and confiscation an exception.

#. The petitioner is not concerned with the value of the forest produce for which the offence is committed. The value of the truck is also ultimately immaterial in the matter. Where question comes for penalty to be imposed for commission of the offence and matter comes for confiscation of the vehicle used for commission of the forest offence, the owner gives low value thereof but where question comes of claiming compensation, the value given is high. Here what the learned counsel for the petitioner contends that the value of the truck was only Rs.42,000/-. Though it is a mere assertion and it cannot be accepted but even if it is correct, it is open to the petitioner he may not accept the order of the Sessions Judge and allow the respondent to confiscate the vehicle. Learned Sessions Judge has only

substituted the order of confiscation of the vehicle by imposing the penalty and the petitioner has two options either to deposit the amount of penalty or permit the confiscation of the truck. In such matters, these arguments are not at all relevant and needs not to be considered what to say to give any findings. This petition is wholly misconceived and misplaced. Learned Sessions Judge has taken liberal view in the matter which otherwise was not called for in the facts of this case and still the petitioner is not satisfied that is different matter. Sitting under Article 227 of the Constitution, this Court is not there to protect those persons who are using their vehicle in commission of the forest offence.

##. In the result, this special criminal application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated. The petitioner is directed to pay costs of this petition to the State of Gujarat.

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